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13 COUPA SOFTWARE INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

18 ARIBA, INC.,
a Delaware corporation,

Case No.: 3:12-cv-01484-WHO

Plaintiff/Counter-defendant.

JOINT CASE MANAGEMENT STATEMENT

V.

21
COUPA SOFTWARE INC.,
a Delaware corporation.
22

Defendant/Counterclaimant.

1 Pursuant to Paragraph 10 of the Court's June 27, 2013 Reassignment Order, this Joint
2 Case Management Statement is hereby submitted on behalf of Plaintiff/Counter-defendant
3 Ariba, Inc. ("Ariba") and Defendant/Counterclaimant Coupa Software Inc. ("Coupa").

4 **A. Date the Case Was Filed**

5 Ariba filed its Complaint on March 23, 2012. (Dkt. No. 1.)

6 **B. Descriptions of the Parties**

7 Ariba is a software services company that provides collaborative business commerce
8 solutions, including electronic procurement (or "e-procurement") systems for each step of the
9 procurement process, including locating and requesting operating resources, approving
10 requisitions, and billing and payment.

11 Coupa was founded in 2006 to provide a cloud-based alternative to traditional and aging
12 e-procurement solutions. It provides a self-service requisitioning system that leveraged
13 advances in web technologies to make e-procurement within an enterprise as easy as shopping
14 from home.

15 **C. Summary of Claims and Counter-Claims**

16 Ariba asserts that Coupa directly and contributory infringes claims 1-9, 13-18, and 20-45
17 of Ariba's U.S. Patent No. 7,117,165 ("the '165 Patent"). Ariba seeks monetary relief for lost
18 profits and/or a reasonable royalty adequate to compensate for Coupa's infringement, which has
19 been ongoing since 2006. Ariba also seeks a permanent injunction.

20 Coupa has filed an answer denying that it has directly infringed or contributed to the
21 infringement of any claims of the '165 Patent, and asserting affirmative defenses of: non-
22 infringement; invalidity for failure to comply with one or more provisions of 35 U.S.C. §§ 101,
23 102, 103, and 112; patent misuse and/or bad faith enforcement; unclean hands; laches;
24 prosecution history estoppel; and failure to state a claim upon which relief can be granted. In
25 addition, Coupa has asserted counterclaims for a declaratory judgment of non-infringement and
26 invalidity of the claims of the '165 Patent. Coupa denies that Ariba is entitled to any monetary
27 or injunctive relief.

1 **D. Events Underlying the Action**

2 Ariba filed its complaint on March 23, 2012. Ariba alleges that Ariba and Coupa are
3 direct competitors in the e-procurement software market. Ariba contends that Coupa has been
4 and is infringing claims 1-9, 13-18, and 20-45 of the '165 Patent by making, using, offering to
5 sell, selling, and/or importing e-procurement software products and services. Ariba also alleges
6 that Coupa has been and is contributing to infringement by others. Ariba's investigation and
7 analysis is continuing.

8 Coupa has filed an answer denying that it has directly infringed or contributed to the
9 infringement of any claims of the '165 Patent, and asserting affirmative defenses of: non-
10 infringement; invalidity for failure to comply with one or more provisions of 35 U.S.C. §§ 101,
11 102, 103, and 112; patent misuse and/or bad faith enforcement; unclean hands; laches;
12 prosecution history estoppel; and failure to state a claim upon which relief can be granted. In
13 addition, Coupa has asserted counterclaims for a declaratory judgment of non-infringement and
14 invalidity of the claims of the '165 Patent.

15 Ariba has answered Coupa's counterclaims, denying Coupa's first counterclaim for
16 declaratory judgment that Coupa does not infringe any claim of the '165 Patent. Ariba's answer
17 also denies that there is an actual case or justiciable controversy regarding Coupa's second
18 counterclaim. Finally, Ariba denies Coupa's second counterclaim for declaratory judgment that
19 one or more of the claims of the '165 Patent is invalid. Ariba's answer asserts the affirmative
20 defenses of failure to state a claim upon which relief can be granted, that the claims of the '165
21 Patent are not invalid, and unclean hands.

22 The case was originally assigned to Judge Hamilton. On July 12, 2012, Judge Hamilton
23 held a CMC and scheduled a claim construction tutorial for July 26, 2013 and a Markman
24 hearing for July 31, 2013. Docket No. 23. Thereafter, on August 7, 2012, the Court entered the
25 parties' Proposed Stipulated Case Management Plan with dates for the exchange of
26 infringement and invalidity contentions, claim construction briefing and discovery and
27 mediation. Docket No. 25. Ariba served its infringement contentions pursuant to Patent Local
28 Rule 3-1 on September 7, 2012. Coupa served its invalidity contentions pursuant to Patent

1 Local rule 3-4 on November 19, 2012. The parties commenced the exchange of written and
2 document discovery, including the service of initial disclosures, interrogatories, requests for
3 production and review of source code, and test instances of the accused product and Ariba's
4 product.

5 The case was reassigned to Judge Tigar on February 2, 2013. Dkt. No. 26. The tutorial
6 and claim construction hearing dates were vacated and the parties were ordered to submit a joint
7 case management statement. Dkt. No. 26. In accordance with the disclosure dates set by Judge
8 Hamilton in the August 7, 2012 CMC Order (which remained in effect), the parties exchanged
9 their Patent Local Rule 4-1 preliminary list of claim terms for construction on March 20, 2013.

10 The parties filed a Joint Case Management Plan on February 26, 2013. (Dkt. No. 27.)
11 Judge Tigar held a CMC on April 9, 2013. (Dkt. No. 33.) Judge Tigar re-set the tutorial for
12 August 20, 2013 and the claim construction hearing for September 3, 2013, with the opening
13 claim construction brief due on July 12, 2013. (*Id.*) The Court entered the parties proposed
14 Stipulated Case Management Order setting the claim construction briefing and discovery
15 schedule on May 1, 2013. (Dkt. No. 38.) The parties exchanged their Patent Local Rule 4-2
16 preliminary constructions of claim terms and identification of extrinsic evidence on May 6,
17 2013. The parties filed their Patent Local Rule 4-3 Joint Claim Construction and Prehearing
18 Statement on May 28, 2013. On June 7, 2013, the Court entered the parties' Stipulation and
19 Proposed Order Extending Deadline for Claim Construction Discovery. (Dkt. No. 41.)

20 On June 27, 2013, the case was reassigned to your honor. The reassignment order
21 vacates the August 20, 2013 and September 3, 2013 claim construction tutorial and hearing
22 dates, however, the remaining claim construction briefing dates remain in place.

23 Ariba served the expert Declaration of Dr. Michael I. Shamos on claim construction on
24 June 17, 2013. Coupa took Dr. Shamos' deposition on June 27, 2013. Ariba is scheduled to
25 serve its opening brief on claim construction on July 12, 2013. (Dkt. No. 38.) Coupa's
26 responsive brief is due on July 26, 2013. (*Id.*) Ariba's reply brief is due on August 2, 2013.
27 (*Id.*)
28

1 **E. Relief Sought and Damages Claimed**

2 Ariba seeks a judgment (a) that one or more claims of the '165 Patent have been
3 infringed, either literally or under the doctrine of equivalents, by Coupa; (b) awarding damages
4 to Ariba in the full amount of actual damages, including for any lost profits, price erosion, and
5 in no event less than a reasonable royalty; (c) awarding Ariba reasonable attorneys' fees and
6 costs, including interest; (d) permanently enjoining Coupa from further infringing activity;
7 (e) awarding pre-judgment and post-judgment interest on Ariba's damages; and (f) awarding
8 any further relief that the Court finds to be just and appropriate under the circumstances.

9 Coupa seeks a judgment that (a) Coupa's technology is not covered by any valid and
10 enforceable claim of the '165 Patent, and that Coupa does not infringe (directly or indirectly)
11 any valid and enforceable claim of the '165 Patent; (b) the claims of the '165 Patent are invalid;
12 (c) dismisses Ariba's complaint with prejudice; (d) Ariba take nothing by reason of its
13 complaint; (e) awarding Coupa its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
14 (f) awarding Coupa its reasonable costs incurred in this action; and (g) awards Coupa such other
15 relief as this Court deems just, reasonable, and proper.

16 **F. Status of Discovery**

17 The parties completed the Rule 26(f) conference on July 2, 2012 and exchanged their
18 Rule 26(f)(3)(A) initial disclosures on July 5, 2012. The parties agreed to a stipulated protective
19 order, which was ordered by the Court on July 12, 2012. (Dkt. No. 22.) The parties further
20 agreed to abide by the ESI-handling mechanisms set forth in the Model Order Regarding E-
21 Discovery in Patent Cases approved by the E-Discovery Committee of the Federal Circuit
22 Advisory Council, as modified by the parties and approved by the Court. (Dkt. No. 20-1, 23.)

23 Ariba served Coupa with its First Sets of Interrogatories and Requests for Production on
24 October 12, 2012. Coupa responded to these requests on November 14, 2012 and supplemented
25 a subset of its Interrogatory responses on December 21, 2012 and supplemented another subset
26 on January 8, 2013. Coupa served Ariba with its First Set of Requests for Production on
27 October 24, 2012; its First Set of Interrogatories on November 21, 2012; and its Second Set of
28 Requests for Production on January 4, 2013. Ariba responded to these requests on November

1 29, 2012, January 7, 2013, and February 11, 2013, respectively. Document production by both
2 parties is ongoing.

3 Coupa served third party document subpoenas to Texas Instruments Incorporated on
4 October 23, 2012, to Lawrence Livermore National Security, LLC on October 24, 2012, and to
5 Thermo Fisher Scientific Inc. on November 8, 2012.

6 Pursuant to the Court's Order Extending Deadline for Claim Construction Discovery,
7 dated June 7, 2013, the cut-off date for claim construction discovery is July 2, 2013. Dkt. No.
8 41. The parties have agreed that expert discovery should be limited, and agree to exclude the
9 following four categories of documents and things from discovery: (1) drafts of expert reports
10 and expert declarations; (2) written or oral communications between a retained expert and the
11 attorneys of the party retaining the expert relating to the subject of the expert's retention in this
12 case, including the preparation of expert reports, expert declarations, and trial testimony; (3) all
13 notes, memoranda, and other writings prepared by an expert in connection with the expert
14 witness' engagement for this case, except to the extent that the expert consults them while
15 testifying at a deposition or at trial; and (4) documents and/or things reviewed by an expert
16 witness but not relied upon by the witness to draft his or her expert report. Notwithstanding the
17 above, the following shall not be excluded from discovery: (1) testimony pertaining to a
18 testifying expert's compensation; (2) facts or data that the attorney provided and the testifying
19 expert considered in forming opinions; and (3) assumptions that the attorney provided and that
20 the testifying expert relied on.

21 Ariba served Coupa with the declaration of Michael I. Shamos, Ph.D., J.D., Ariba's
22 expert, on June 17, 2013 and Coupa took Dr. Shamos' deposition on June 27, 2013.

23 The parties have also agreed, and the Court has ordered, that each party shall have up to
24 70 hours of total deposition time for fact witnesses, with no limit on the number of fact
25 depositions. Each party shall have up to seven hours of deposition time for any expert
26 declaration on claim construction, and up to an additional seven hours deposition time for each
27 expert report submitted by an expert. These limits may be modified by agreement of the parties
28 or upon further order of this Court upon a showing of good cause.

1 **G. Procedural History**

2 Coupa was served with the Complaint on March 26, 2012 and filed its Answer and
3 Counterclaims on May 14, 2012. (Dkt. No. 12.) Ariba filed its Answer to the Counterclaims on
4 June 6, 2012. (Dkt. No. 14.) The Initial Case Management Conference before Judge Hamilton
5 was held on July 12, 2012. (Dkt. No. 23.) The case was referred to ADR for Private Mediation
6 to be completed within 60 days from the court's ruling on claim construction. (*Id.*) Ariba
7 served its Patent Local Rule 3-1 Infringement Contentions on September 7, 2012, and Coupa
8 served its Patent Local Rule 3-3 Invalidity Contentions on November 19, 2012.

9 On February 12, 2013, the Court issued a Reassignment Order, reassigning the case to
10 Judge Tigar. (Dkt. No. 26.) The parties served their respective Patent Local Rule 4-1
11 Disclosures on March 20, 2013. The Initial Case Management Conference before Judge Tigar
12 was held on April 9, 2013. (Dkt. No. 33.) The parties served each other with their respective
13 Patent Local Rule 4-2 Disclosures on May 6, 2013. The parties filed the Joint Claim
14 Construction and Prehearing Statement Pursuant to Patent Local Rule 4-3 on May 28, 2013.
15 (Dkt. No. 39.)

16 No motions have been filed to date.

17 **H. Deadlines in Place Before Reassignment**

18 The case schedule in place before this case was reassigned was as follows:

EVENT	DEADLINE
Last Day for Claim Construction Discovery (Patent L.R. 4-4)	Tuesday, July 2, 2013 (Dkt. No. 41) (June 7, 2013 Order Extending Deadline for Claim Construction Discovery)
Ariba's Opening Claim Construction Brief (Patent L.R. 4-5(a))	Friday, July 12, 2013 (Dkt. No. 34) (April 9, 2013 Scheduling Order)
Coupa's Claim Construction Opposition Brief (Patent L.R. 4-5(b))	Friday, July 26, 2013 (Dkt. No. 38) (May 1,

1	EVENT	2	DEADLINE
3		4	2013 Case Management Order)
5	Ariba's Claim Construction Reply Brief (Patent L.R. 4-5(c))	6	Friday, August 2, 2013 (Dkt. No. 38) (May 1, 2013 Case Management Order)
7	Technology Tutorial	8	Tuesday, August 20, 2013 (Dkt. No. 34) (April 9, 2013 Scheduling Order)
9	Claim Construction Hearing	10	Tuesday, September 3, 2013 (Dkt. No. 34) April 9, 2013 Scheduling Order)
11	Deadline to complete private mediation	12	60 days after claim construction ruling (Dkt. No. 23)
13		14	

15 **I. Modifications**

16 The parties understand that the August 20, 2013 claim construction tutorial and
17 September 3, 2013 hearing dates are vacated by the June 27, 2013 Reassignment Order. The
18 parties request that the tutorial and claim construction hearing again be scheduled for early
19 September 2013, or as close to the original dates as possible.

20 The parties request that the Patent Local Rule 4-5(a), (b), and (c) deadlines (*i.e.*, claim
21 construction briefing) remain as scheduled for July 12, 2013, July 26, 2013, and August 2, 2013,
22 respectively.

23 The parties request that an in-person or telephonic case management conference be set
24 for the first week in August 2013, or as soon thereafter as possible.

25 The parties agree to keep the deadline to complete private mediation within 60 days after
26 the Court's claim construction ruling.

27 Ariba further requests that the case be set the case for trial in September 2014, since the
28 case has now been pending for 15 months and has been reassigned twice. Coupa requests no

1 change in the current plan and asks that trial setting occur after the Court issues its Claim
2 Construction Order.

3 **J. Magistrate Judge**

4 The parties do not consent to a Magistrate Judge for trial.

5 **K. Case Management Conference**

6 The parties believe that a telephonic or in-person conference regarding the claim
7 construction tutorial and hearing dates may be helpful.

8

9

Respectfully submitted,

10 Dated: July 08, 2013

COVINGTON & BURLING LLP

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12

By: /s/ Amy K. Van Zant
Amy K. Van Zant
Attorneys for Plaintiff/Counter-defendant
ARIBA, INC.

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Dated: July 08, 2013

FISH & RICHARDSON P.C.

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By: /s/ Kelly C. Hunsaker
Kelly C. Hunsaker
Attorneys for Defendant/Counterclaimant
COUPA SOFTWARE INC.

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ECF CERTIFICATION

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Dated: July 08, 2013 COVINGTON & BURLING LLP

By: /s/ Amy K. Van Zant
Amy K. Van Zant
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ARIBA, INC.